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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,723	12/28/2001	John DiDomenico	87354.2901	3936

30734 7590 03/24/2004

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EXAMINER

PHAM, HOA Q

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/028,723

Applicant(s)

DIDOMENICO ET AL.

Examiner

Hoa Q. Pham

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,8,17,21 and 22 is/are rejected.
- 7) ☒ Claim(s) 2-4,7,9-16 and 18-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 06-01, 09-02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The Information Disclosure Statements, filed June 21, 2001, and September 06, 2002, are acknowledged. An initialed copy of the PTO – 1449 is enclosed. It is noted that applicants have filed a large volume of prior art in the instant application. Some of these references do not appear material to the claimed invention. Applicant's attention is directed to *Rohm and haas Co. v. Crystal Chemical Company, et al.*, 220 USPQ 289, *Ex Parte Morning Surf Corp.*, 230 USPQ 446, and *Penn Yan Boats, Inc. v. Sea Lark Boats, inc.*, 175 USPQ 260.
2. The IDS filed on 9/6/02 has not been considered because the serial number, the filing date, and the applicant's names on the PTO – 1449 are incorrect. Therefore, the references on the list have been "crossed – off".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 6, 8, 17 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ukon et al (5,241,362).

Regarding claims 1, 17, 21 and 22; Ukon et al discloses a n optical system comprising a first emitter (13) for emitting a first light beam having a first spectrum; a

second emitter (1) for emitting a second light beam at a second spectrum; first receiver (6) for receiving the first light beam; and a second receiver (15) for receiving the second light beam, wherein the first light beam travels along a first path in a first direction and the second light beam travels along a second path in a second direction and at least a portion of the first light path overlaps with at least a portion of the second light path to form an overlapping beam, and at the overlapping beam the first direction is opposite to the second direction (see figure 1 and claim 4).

Regarding claim 5, Ukon teaches that the first emitter can be visible light (column 3, lines 33-34).

Regarding claim 6, Ukon teaches that the second emitter is one of infrared, ultraviolet light, or visible light emitter (see column 5, lines 17-28).

Regarding claim 8, figure 1 of Ukon shows that the first and second beams of the light source (13) and light source (1) are in opposite directions.

#### ***Allowable Subject Matter***

5. Claims 2-4, 7, 9-16, 18, 19, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Following references are relative to the claimed invention: Jurca 95,933,240), Johnson et al (5,343,043), Stedman et al (5,401,967), Lord et al

(6,455,851), Cerni et al (6,275,290), Goody (5,268,745), Benz et al (3,904,880), Koch et al (5,739,535), DiDomenico et al (2003/0057383) and DiDomenico et al (2003/0057373).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Q. Pham whose telephone number is (571) 272-2426. The examiner can normally be reached on 7:30AM to 6 PM, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (571) 272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hoa Q. Pham  
Primary Examiner  
Art Unit 2877